IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2293 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ADARSH FOUNDATION & 1 - Petitioner(s)
Versus
JUSTICE R.J.SHAH (RETIRED) FEE COMMITTEE (MEDICAL) - Respondent(s)

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Appearance :
MR MITUL K SHELAT for Petitioner(s) : 1 - 2.
MR BHASKAR P.TANNA Senior Advocate with MAHROOKH N. KERAVALA for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 21/03/2006

CAV JUDGMENT

1. By way of this petition under Article 226 of the Constitution of India, the petitioner Self Financed Medical Institute has prayed for appropriate writ, order and/or directions directing the fee structure prescribed by Justice R.J.Shah (Retired) Committee (Medical) with respect of the petitioner as is communicated vide letter dtd.18/1/2005, by which the Committee has approved the fee structure of Rs.1.30 Lacs as annual fee for the said institute per student admitted in the State Quota as well as Management Quota. The petitioner has also further prayed to direct that the fee structure as proposed by the petitioner at the rate of 4 Lacs per annum per student for imparting education in the

discipline of Medicine at the level of graduation shall prevail for the academic year 2004-2005, 2005-2006 and 2006-2007.

2. It appears from the record that the petitioner is running a Self Financed Institute named Kesar Sal Medical College & Research Institute, Ahmedabad. It also appears from the record that 2004-2005 was the first academic year. The respondent NO.1 Committee is constituted pursuant to the directions issued by the Honourable Supreme Court in the case of Islamic Academy of Education Vs. State of Karnataka, reported in (2003) 6 SCC 697. It is the case on behalf of the petitioner that the respondent No.1 Committee called upon all the Self Financed Colleges to submit their proposed fee structure in view of dicta of the Hon'ble Supreme Court and therefore, the petitioner approached the respondent Committee vide its

proposal dtd.29/7/2004 and furnished information so as to enable the Committee to determine fee structure of the college. It is the case of the petitioner that earlier the petitioner sought to furnish information to the Committee so as to enable the Committee to determine fee structure for the College. However, the Committee refused to accept any information from the petitioner with respect of fee structure on the ground that it had not been granted any permission by the Government of India and Government of India granted permission vide letter dtd.27/7/2004 and thereupon, the petitioner vide communication dtd.29/7/2004 immediately submitted its proposed fee structure to the respondent Committee. However, in the meantime, somewhere on 6/6/2004, the Committee determined the fee structure with respect of various Self Financed Medical Colleges in the State of Gujarat and the fee so determined by the Committee was Rs.1.30 Lacs per student per

annum. It is the case on behalf of the petitioner that as the first round of admission was required to be completed on or before 31/7/2004 and the Joint Admission Committee started granting admission on the basis of the fee structure of Rs.1.30 Lacs per student per annum and since the petitioner's proposal was pending for consideration of the Committee, in order to avoid any complication and without prejudice to its right, the petitioner also collected fees at Rs.1.30 Lacs per student per annum. It is the case on behalf of the petitioner that thereafter, the petitioner repeatedly approached the respondent Committee to approve the fee structure proposed by it and again vide letter dtd.5/9/2004, the petitioner requested the Committee to determine its fee structure. It is the case on behalf of the petitioner that the Committee neither responded to the said communication nor sent its view for explanation.

However, on 28/1/2005, the petitioner received a communication dtd.18/1/2005 form the respondent Committee communicating its decision on the application submitted by the petitioner and the Committee approved the fee structure of Rs.1.30 Lacs per student per annum for State Quota as well as Management Quota. Being aggrieved with the same, the petitioner has preferred the present petition under Article 226 of the Constitution of India.

3. Mr.N.D. Nanavati, learned Senior Advocate appearing on behalf of the petitioner institute has submitted hat the impugned communication dtd.18/1/2005 determining the fee structure of the petitioner institute at Rs.1.30 Lacs per student per annum suffers from vice of non-application of mind by the Committee. He has submitted that the impugned decision is in violation of the principle of natural justice and

is in breach of two decisions of the Hon'ble Supreme Court in the case of TMA Pai Foundation Vs.State of Karnataka, reported in (2002) 8 SCC 481 and in the case of Islamic Academic (Supra).

4. Mr.Nanavati has further submitted that before determining the fee structure of the petitioner, the Committee was bound to provide an opportunity of hearing to the petitioner and that even basic opportunity of submitting proposal as was provided to other colleges, was not provided to the petitioner. It is also further submitted by Mr.Nanavati that the impugned decision of the respondent suffers from non-application of mind and violative of Article 14 of the Constitution of India. It is also submitted that right to prescribe fee structure is the fundamental right available to the petitioner under Article 19 of the Constitution of India and therefore, it was incumbent upon

the respondent Committee to consider the fee structure proposed by the petitioner in light of the documents submitted by the petitioner and the existing infrastructure provided by the petitioner college. It is also submitted by him that the reasons attributed by the Committee clearly amplify that while arriving at the impugned decision, the respondent Committee has neither considered costs incurred nor actual infrastructure in the existing college. It is also further submitted that neither the Committee nor its representative have visited the college premises prior to taking the impugned decision. It is also further submitted that the Committee was pre-determined to impose fee structure of Rs.1.30 lacs determined by it. It is also further submitted that the Committee has not assigned any rational reasons in support of its decision as communicated in the impugned decision. Submitting accordingly, Mr.Nanavati has requested

to quash and set aside the impugned decision of the Committee determining the fee structure at Rs.1.30 Lacs per student per annum so far as the petitioner is concerned and let the petitioner to charge fee at Rs.4 Lacs per student per annum.

5. Mr.B.P. Tanna, learned senior advocate appeared on behalf of the respondent No.1 Committee. An Affidvit-in-reply is filed on behalf of the respondent No.1. At the outset, it is submitted by him that the controversy which is raised in the present petition is examined by the Division Bench of this Court in a group petition of Letters Patent Appeal NO.1380 of 2004 and other cognate appeals and the Division Bench of this Court (Coram : M.S. Shah and D.H. Waghela, JJ) vide judement and order dtd.16/3/2005 have been pleased to reject all the Letters Patent Appeals confiring the order passed by the learned Single Judge of this Court, by which the learned

Single Judge has dismissed the petitions in which decision of the respondent Committee prescribing the fee structure of Rs.1.30 lacs was challenged. Therefore, it is requested to dismiss the present petition also. So far as the grievance of the petitioner about the basic opportunity of submitting proposal as provided to other colleges and not provided to the petitioner is concerned, it is submitted in the reply that in fact the petitioner itself has averred in the petition that they have submitted proposal vide letter dtd.29/7/2004. It it also further submitted that the contention on behalf of the petitioner that the impugned order is in beach of principle of natural justice is concerned, as the committee has been constituted by virtue of the decision of the Hon'ble Supreme Court and the Hon'ble by directing constitution of the Committee was essential meeting contingency in absence of appropriate legislation in the said regard and

therefore, the Committee was essentially discharging quasi legislative functions and therefore, there cannot be any challenge to the same on the ground of violation of the principle of natural justice. It is further submitted that there could not have been anything new or different from what they had submitted earlier and they were given full opportunity to explain their facts at the relevant time in past at the first instance. It is also further submitted that having regard to the fact that the petitioner was a new institution, they could not have provided past data as demanded by the Committee. It is also further submitted that the decision to fix the fee of the petitioner institution at Rs.1.30 lacs is just and proper and the same has been done after considering the documents produced by the petitioner essentially existing actual infrastructure in the college. It is also further submitted that the petitioner being a new

institution, details of actual expenses of last two years which was bench mark laid down by the committee for fixing the fee structure was not available. It is submitted that except for the cost incurred in infrastructure and development of the petitioner, all other calculations presented by the petitioner to the respondent Committee was hypothetical and the respondent committee had taken normative assessment of the same and has fixed the fee structure of the petitioner. It is also further submitted that while the committee has considered the actual cost incurred by the petitioner in view of the fact that as the petitioner institution was a new institution, in absence of any material to work out actual costs, which would be incurred in running the institution and further figures placed by the petitioner institution which indicates the amount what would be incurred in running the institution being hypothetical

inflated, the Committee had fixed the fee structure on normative basis, considering the fee structure fixed for other institutions. Consequently, relying upon the decision rendered by the Division Bench of this Court in Letters Patent Appeal NO.1380 of 2004 and other cognate appeals, Mr.Tanna, learned senior advocate has requested to dismiss the present petition.

6. Having heard the learned advocates appearing on behalf of the parties and considering the material on record, it is clear that the petitioner is a Self Financed Institution running Medical College. It is also not in dispute that the academic year 2004-2005 was the first academic year of the petitioner and therefore, no particulars were available with the petitioner with regard to the past two years. It is the contention on behalf of the petitioner that the impugned order is in breach of the

principle of natural justice, as no opportunity of hearing was given and/or no proper opportunity of being heard was afforded to the petitioner. It is required to be noted that other Self Financed Medical Institutions in the State of Gujarat challenged the decision of the respondent Committee prescribing fee structure by way of writ petitions before this Court and the learned Single Judge has dismissed all the said writ petitions, against which Letters Patent Appeal NO.1380 of 2004 and other cognate appeals were preferred before the Division Bench of this Court and the same came up for hearing before the Division Bench of this Court, wherein all the contentions raised in the present petitions were raised. The Division Bench of this Court (Coram : M.S. Shah and D.H. Waghela, JJ) vide detailed and reasoned judgment and order dtd.16/3/2005 has held that the Committee was legally and duly constituted and there was no

infirmity much less any fundamental defect or inherent lack of jurisdiction in the proceedings of the Committee on account of its Constitution and working, so as to render its decision a nullity. It is also further held by the Division Bench that the Fee committee was constituted and was performing its functions in accordance with the directions of the Hon'ble Supreme Court which expressly conferred upon it. The powers and functions to discharge whether the fee proposed by the institution were justified or indulged in profiteering or charging of capitation fees and it was competent to approve some other fee which would be binding for a period of 3 years and admittedly the difficult task of seeing that the professional institution do not become auction house for the purpose of selling seats even in absence of sufficient guidelines, was left to the Committee. Thus, there was vast area of discretion to be exercised by the committee and

to ensure fairness of the procedure and correctness of its decision, the Apex Court provided for its constitution comprising of a retired High Court Judge, a representative of Medical Council of India, a Chartered Accountant and also provided for production and scrutiny of all relating documents. It is also held by the Division Bench of this Court that the Committee was essentially acting for the execution of the order of the Hon'ble Supreme Court and in absence of any further direction or subsequent orders, the duty cast upon the High Court by virtue of Article 141 of the Constitution is to act in aid of the Hon'ble Supreme Court and view in that perspective. The High Court cannot entertain the plea that the execution of the order of the Hon'ble Apex Court would result into violation of any of the fundamental rights of the petitioners. It is also further held that the High Court cannot aid or issue further directions after the

order of the Hon'ble Supreme Court that is executed and fee structure is fixed. It is also further held by the Division Bench that the order passed by the administrative authority exercising the discretion vested in it cannot be interfered in judicial review unless it is shown that the exercise of the discretion itself was perverse or illegal. It is also further held by the Division Bench that the decision of the Committee is based upon the relevant data submitted by the institutions and it was the institution who had sought to inject irrelevant considerations into calculation of appropriate fees and the committee had rightly discarded such imaginary projections of figures to arrive at reasonable figure of fee in accordance with law. Broad guidelines provided by the Hon'ble Supreme Court in the judgement in Islamic Academy (Supra). It is observed by the Hon'ble Division Bench that the Committee having considered the facts and figures and having given

the institute an opportunity of presenting their case before it, envisaged in the judgement of Islamic Academy (Supra) found that the fee stricture evolved by the Committee does not suffer either from non-application of mind or non-consideration of relevant factors and non-supply of the basis of fixation of fees would not by itself, in the facts and circumstances of the case make the fee structure vulnerable to challenge.

7. Now, considering the facts of the case on hand, the petitioner submitted its proposal along with the relevant particulars vide proposal dtd.29/7/2004 for approval of fee structure and after considering the same, i.e. data supplied by the petitioner and observing that the petitioner institute has come up from July, 2004 and since this is the first year of the petitioner college, the details of actual expenses for the last two

years of the college was not available and therefore, the Committee has taken into consideration the estimates for the years 2004-2005 and 2005-2006 on normative basis as applicable to a new college and thereafter, considering the same, the committee has approved and determined the fee structure at Rs.1.30 Lacs per student per annum in the State Quota as well as Management Quota. Thus, the decision is based upon the date supplied by the petitioner and the same is taken after giving opportunity to represent their case by way of submitting data and has fixed the fee structure at Rs.1.30 Lacs per student per annum, it cannot be said that the impugned decision is so illegal and/or perverse and/or arbitrary which requires interference at the hands of this court in exercise of the powers under Article 226 of the Constitution of India. In view of the above and for the reasons recorded in the judgement and order rendered by the

Division Bench of this Court (Coram : M.S. Shah and D.H. Waghela, JJ) dtd.16/3/2005 in Letters Patent Appeal No.1380 of 2004 and other allied appeals with regard to other Self Financed Medical Institutions, the present petition deserves to be dismissed, as the Division Bench has already confirmed the decision of the respondent No.1 Committee determining the fee structure of other Self Financed Medical Institutions and the Division Bench has elaborately dealt with all the contentions.

8. In the result, there is no substance in the present petition and the same is required to be dismissed and is accordingly dismissed. Rule is discharged. Ad-interim relief granted earlier stands vacated forthwith. On vacation of the ad-interim relief, necessary consequences would be that if the petitioner has recovered fees at Rs.4 Lacs pursuant to the ad-interim relief granted

by this Court, in that case, the petitioner shall refund the amount of difference between Rs.1.35 Lacs and Rs.4 Lacs, if recovered. The said exercise shall be done within a period of FOUR WEEKS. However, there will be no order as to costs.

(M.R. SHAH,J.)

At this stage, a request is made on behalf of the petitioner to stay the aforesaid judgement and order passed by this Court.

In the facts and circumstances of the case and for the reasons stated above, more particularly, considering the judgement of the Division Bench of this Court, the request is rejected.

(M.R.SHAH,J.)

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